

ENGINEERING CONCEPTS, INC.
Consulting Engineers

February 5, 2008

EMAILED TESTIMONY TO: testimony@capitol.hawaii.gov

Hearing Date: Thursday, February 7, 9 a.m., Conference Room 229

Honorable Senators Russell Kokubun, Chair, David Ige, Vice Chair, and Members of the Senate Committee on Commerce, Consumer Protection and Affordable Housing

Subject: SB 2893, Relating to Torts

Dear Chair Kokubun, Vice Chair Ige, and Committee Members,

Engineering Concepts, Inc. is a Hawaii-owned and managed small business civil & environmental engineering firm operating in Hawaii since 1986. **We are in strong support of SB 2893, Relating to Torts.**

SB 2893 attempts to bring fairness to the judicial system for design professionals, who are responsible for the design of beneficial public works projects that greatly improve the quality of life for the State's citizens.

SB 2893 provides that design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or more liable, joint and several liability would still apply. We have looked at tort reform legislation passed in other states and feel SB 2893 is a reasonable and fair compromise to the full abolition of joint and several liability enacted in a number of states.

We believe that this limited concession to design professionals for highway projects is warranted because their work is conducted for the greater good of the State's citizens, a public benefit that far exceeds the reward to the design professional. Projects are conducted to design standards and codes and are reviewed and approved by government agencies. Many of Hawaii's design professionals are small businesses, and small firms with minimal involvement in a highway project are still subject to the same joint and several liability risks.

SB 2893 provides for more fairness in allocation of risk. Under joint and several liability, a design professional who may be found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident may be forced to pay far more than his/her share of damages (even up to 100% of the damages if other parties are unable to pay).

For most firms, the professional liability risk for design professionals far outweighs their earnings from these projects. Many small business firms earn less than \$20,000 for their work on a highway project, but face enormous financial risks under joint and several liability. Even before going to trial, insurance companies settle for the design professional's insurance policies limits, because of the risk of large rewards at trial. Thus the design professional, who may not have any negligence on a project, can be forced to pay many times more than his earnings on the project. If the settlement exceeds the design professional's insurance coverage, the design professional would be personally liable. This situation is punitive to a design professional doing good works for the State, while not accounting for the personal responsibility of the accident party who may have been drinking, speeding, or reckless.

ENGINEERING CONCEPTS, INC.

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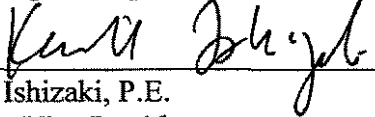
Because of the risk and escalating professional liability insurance premiums associated with doing highway work, many of our small firms no longer participate in these projects, reducing the pool of qualified consultants. This results in a delay of awarding of these projects and increase in traffic woes in the State.

We stress that we are not seeking to escape our responsibilities. Design professionals who are found liable would still be required to pay their share of the damages, and those greater than 25% liable would still be subject to joint and several liability. This bill, however, would provide particular relief for our small business firms.

We appreciate the continuing efforts of your committee and the members of the State Legislature to improve the business climate for small business in Hawaii. Thank you for the opportunity to testify in support of SB 2893.

Very truly yours,

Engineering Concepts, Inc.



Kenneth Ishizaki, P.E.
Executive Vice President

February 4, 2008

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Honorable Senators Russell Kokubun, Chair, David Ige, Vice Chair, and Members of the Senate Committee on Commerce, Consumer Protection and Affordable Housing

Subject: SB 2893, Relating to Torts

Dear Chair Kokubun, Vice Chair Ige, and Committee Members,

Fukunaga & Associates, Inc. is a Hawaii-owned and managed small business civil & environmental engineering firm operating in Hawaii since 1969. **We are in strong support of SB 2893, Relating to Torts.**

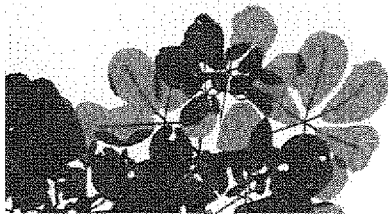
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We believe that this limited concession to design professionals for highway projects is warranted because their work is conducted for the greater good of the State's citizens, a public benefit that far exceeds the reward to the design professional. Projects are conducted to design standards and codes and are reviewed and approved by government agencies. Many of Hawaii's design professionals are small businesses, and small firms with minimal involvement in a highway project are still subject to the same joint and several liability risks.

SB 2893 provides for more fairness in allocation of risk. Under joint and several liability, a design professional who may be found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident may be forced to pay far more than his/her share of damages (even up to 100% of the damages if other parties are unable to pay).

FUKUNAGA & ASSOCIATES, INC.



February 4, 2008

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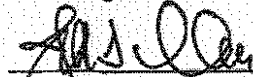
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We stress that we are not seeking to escape our responsibilities. Design professionals who are found liable would still be required to pay their share of the damages, and those greater than 25% liable would still be subject to joint and several liability. This bill, however, would provide particular relief for our small business firms.

We appreciate the continuing efforts of your committee and the members of the State Legislature to improve the business climate for small business in Hawaii. Thank you for the opportunity to testify in support of SB 2893.

Very truly yours,

Fukunaga & Associates, Inc.



Jon Muraoka, P.E.
Vice President

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

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February 4, 2008

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Honorable Senators Russell Kokubun, Chair, David Ige, Vice Chair, and Members of the Senate Committee on Commerce, Consumer Protection and Affordable Housing

Subject: SB 2893, Relating to Torts

Dear Chair Kokubun, Vice Chair Ige, and Committee Members,

The American Council of Engineering Companies of Hawaii (ACECH), representing more than 70 consulting engineering firms in Hawaii, is in strong support of SB 2893, Relating to Torts.

SB 2893 attempts to bring fairness to the judicial system for design professionals, who are responsible for the design of beneficial public works projects that greatly improve the quality of life for the State's citizens.

SB 2893 provides that design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or more liable, joint and several liability would still apply. We have looked at tort reform legislation passed in other states and feel SB 2893 is a reasonable and fair compromise to the full abolition of joint and several liability enacted in a number of states.

ACECH believes that this limited concession to design professionals for highway projects is warranted because their work is conducted for the greater good of the State's citizens, a public benefit that far exceeds the reward to the design professional. Projects are conducted to design standards and codes and are reviewed and approved by government agencies. Many of Hawaii's design professionals are small businesses, and small firms with minimal involvement in a highway project are still subject to the same joint and several liability risks.

SB 2893 provides for more fairness in allocation of risk. Under joint and several liability, a design professional who may be found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident may be forced to pay far more than his/her share of damages (even up to 100% of the damages if other parties are unable to pay).

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

Senate Committee on Commerce, Consumer Protection and Affordable Housing
February 4, 2008

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Because of the risk and escalating professional liability insurance premiums associated with doing highway work, many of our small firms no longer participate in these projects, reducing the pool of qualified consultants. This results in a delay of awarding of these projects and increase in traffic woes in the State.

We stress that we are not seeking to escape our responsibilities. Design professionals who are found liable would still be required to pay their share of the damages, and those greater than 25% liable would still be subject to joint and several liability. This bill, however, would provide particular relief for our small business firms.

ACECH appreciates the continuing efforts of your committee and the members of the State Legislature to improve the business climate for small business in Hawaii. Thank you for the opportunity to testify in support of SB 2893.

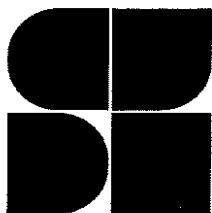
Very truly yours,



Jon Nishimura, P.E.

President

American Council of Engineering Companies of Hawaii



SHIGEMURA, LAU, SAKANASHI, HIGUCHI AND ASSOCIATES, INC.

February 7, 2008

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Honorable Senators Russell Kokubun, Chair, David Ige, Vice Chair, and Members of the Senate Committee on Commerce, Consumer Protection and Affordable Housing

Subject: SB 2893, Relating to Torts

Howard K.C. Lau
Craig H. Sakanashi
Wayne K. Higuchi
Beverly Ishii-Nakayama

Dear Chair Kokubun, Vice Chair Ige, and Committee Members,

Shigemura, Lau, Sakanashi, and Higuchi & Associates (SLSH), a Hawaii-owned and -operated small business engineering firm, **is in strong support of SB 2893, Relating to Torts.**

As design professionals, our potential professional and personal liability is at the forefront of my mind in almost every project I consider taking. While a certain amount of risk is a reality of doing business, the current situation under joint and several liability seems very unfair, especially for small firms. This is particularly so for highway cases, where the claims and awards can be large, creating risks under joint and several liability that far outweigh my potential profit.

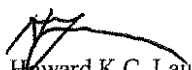
It is unfair that our company's and my financial future should be so at risk because of minor involvement in a public works project, especially if I am not in any way negligent. Engineering work on such projects is performed to State and Federal design standards and codes, and are reviewed and approved by government agencies. However, under the current law, a design professional who is pulled into a claim (even frivolously), but who may be found by a jury to be only one percent (1%) liable for damages, could be forced to pay far more than his/her share of damages if other parties are unable to pay. As a professional, I do not enjoy the same protections as contractors and State agencies; my personal assets are at stake.


For a small consulting structural engineering firm such as ours, the professional liability risk for design professionals far outweighs our earnings from these projects. Many small engineering firms earn less than \$20,000 for their work on a highway project, but face enormous financial risks under joint and several liability. Even before going to trial, insurance companies settle for the design professional's insurance policies limits, because of the risk of large rewards at trial. Thus the design professional, who may not have any negligence on a project, can be forced to pay many times more than his earnings on the project. If the settlement exceeds the design professional's insurance coverage, the design professional would be personally liable. This situation is punitive to a design professional doing good works for the State, while not accounting for the personal responsibility of the accident party who may have been drinking, speeding, or reckless.

SB 2893 will help alleviate some of our firm's concern about being the potential "deep pocket" in every public highway accident case. Our firm has been so concerned about being the "deep pocket" that we have turned down work that we consider risky, including State contracts. We feel that fear on the part of small business design professionals limits the available pool of highly qualified consultants available to conduct State projects.

SLSH appreciates the continuing efforts of your committee and the members of the Senate to assist small businesses in Hawaii. Thank you for the opportunity to testify in support of SB 2893.

Sincerely,


Howard K.C. Lau
President


Beverly K. Ishii-Nakayama
Principal